THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 16533 of 2007

Dated: 23.10.2007

Between:

M/s. Sony Enterprises,
Bharkatpura, Hyderabad.

... Petitioner

AND

The Superintendent,
Gandhi Hospital, Secunderabad,
A.P., & others.

... Respondents

Counsel for the petitioner : Smt. K. Indira Reddy

Counsel for respondent Nos.2&3: Government Pleader for Medical & Health

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WRIT PETITION No. 16533 of 2007

ORDER:-

This writ petition is filed for a writ of mandamus to set aside order dated 10.07.2007, whereby the contract of the petitioner was terminated with effect from 30.06.2007.

The petitioner, which is a proprietary concern, was engaged to supply certain personnel such as Computer Operators, Lab Technicians, Cashiers etc., vide proceedings dated 28.01.2004 of respondent No.1. During the execution of the said contract, respondent No.1 issued a show cause notice dated 31.05.2007.

A reading of the said show cause notice discloses that there were certain excess claims made by the petitioner while presenting the bills; that complaints were made by the employees supplied by the petitioner about non-payment of their salaries by the petitioner; that the petitioner failed to disburse the salaries to their employees in the presence of the hospital authorities and that it was collecting exorbitant commission from the employees supplied by it by deducting the amounts from their salaries. The petitioner gave a reply to the said show cause notice and not being satisfied with the said reply, respondent No.1 passed order dated 10.07.2007 terminating the services of the petitioner with effect from 30.06.2007.

In response to the notice issued in the writ petition, a counter-affidavit has been filed in which several allegations have been made against the petitioner, a reference to which may not be

necessary in the view being taken by me. Suffice it to state that the respondents were not satisfied with the performance of the petitioner on many counts and terminated its contract.

Undisputedly, contract dated 28.01.2004 is non-statutory in nature. There is a clause contained in the said contract that it shall be terminated at any time without assigning any reasons therefor. The contract does not contain a clause specifying its tenure. Ordinarily, in the case of non-statutory contract, if there is violation of any of its terms, it gives rise to a cause of action to the aggrieved party to avail the common law remedy by approaching a civil court and seek appropriate relief including recovery of damages for unlawful termination.

The mere fact that the respondents or the State or its instrumentalities would not convert a private dispute into one falling in the realm of public law. **(see M/s. Radhakrishna Agarwal and others v. State of Bihar and others[1]).**

In view of the fact that the contract is a commercial contract pure and simple, I am not inclined to adjudicate the dispute raised by the petitioner on merits in this writ petition as the petitioner is not entitled to invoke the jurisdiction of this Court by availing a public law remedy. Therefore, while dismissing the writ petition, liberty is given to the petitioner to approach the civil court for appropriate remedy, if so advised, for the alleged illegal termination of the contract.

As a sequel to dismissal of the writ petition, WPMP.Nos.21035 and 21036 of 2007 filed by the petitioner for interim relief are dismissed as infructuous.

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C.V. NAGARJUNA REDDY, J

Date: 23.10.2007
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[1] AIR 1977 SC 1496